

TENTATIVE RULINGS for CIVIL LAW and MOTION

May 7, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: **California Bank & Trust v. Tri C Tire Recycling of Sacramento, Inc.**
Case No. CV CV 08-2851

Hearing Date: **May 7, 2009** **Department Fifteen** **9:00 a.m.**

Andrew C. Muzi and Muzi & Associates' motion to be relieved as counsel of record for defendant Jack Kurchian is **GRANTED**. (Cal. Rules of Court, rule 3.1362.) This order is not effective until a proof of service is filed with the Court showing service of a copy of the signed order on the client. (Cal. Rules of Court, rule 3.1362(e).) Counsel shall promptly serve the client with a copy of the signed order.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Chatfield Construction, Inc. v. Hanlees Davis, Inc., et al.**
Case No. CV CV 06-1641

Hearing Date: **May 7, 2009** **Department Fifteen** **9:00 a.m.**

The unopposed petition to compel arbitration is **GRANTED**. (Code Civ. Proc., § 1281.2.) Plaintiff shall promptly serve counsel for David Hallum, individually and doing business as Central Valley Paving, with a copy of this order.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

CASE: **FIA Card Services, N.A. v. Barry**
Case No. CV G 09-497
Hearing Date: **May 7, 2009** **Department Fifteen** **9:00 a.m.**

The unopposed petition to confirm arbitration award by FIA Card Services, N.A. is **DENIED**. (Code Civ. Proc., § 1286.) There is no proof of service showing service of the petition on the respondent.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **FIA Card Services, N.A. v. Rogers**
Case No. CV G 09-484
Hearing Date: **May 7, 2009** **Department Fifteen** **9:00 a.m.**

The unopposed petition to confirm arbitration award by FIA Card Services, N.A. is **GRANTED**. (Code Civ. Proc., § 1286.) Petitioner must file a verified memorandum of costs to recover its costs. (Cal. Rules of Court, rule 3.1700(a)(1).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Guerrero v. Galloway**
Case No. CV CV 03-540
Hearing Date: **May 7, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff's motion to lift stay on proceeding is **GRANTED**. The parties shall attend a case management conference on Thursday, May 21, 2009, at 1:30 p.m. in Department 10.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **People v. \$685.00**
Case No. CV PT 07-2718
Hearing Date: **May 7, 2009** **Department Fifteen** **9:00 a.m.**

The hearing in this case must be by jury, unless waived by consent of all parties. (Health and Safety Code, § 11488.5, subd. (c)(2).) This matter is ordered to be tried in conjunction with the related criminal action, Yolo County Superior Court Case No. CR F 09-443. (Health and Safety Code, § 11488.4, subs. (i)(3) and (i)(5).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Twin Pines Cooperative Foundation v. Davis Area Cooperative Housing Assoc., Inc.**

Case No. CV PO 08-3424

Hearing Date: **May 7, 2009** **Department Fifteen** **9:00 a.m.**

Defendant's request for judicial notice of the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants is **GRANTED**. (Evid. Code, § 452, subd. (c).) Defendant's request for judicial notice of the facts stated in the articles of incorporation and the bylaws is **DENIED**. (*People v. Thacker* (1985) 175 Cal.App.3d 594; *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106.)

The demurrer on the ground of defect of parties is **OVERRULED**. (Code Civ. Proc., § 389; *Countrywide Home Loans, Inc. v. Superior Court of Los Angeles County* (1999) 69 Cal.App.4th 785.) Defendant has not shown that the Court cannot award complete relief to the plaintiff if the City of Davis is not made a party to this action. It has not been shown that the absence of the City of Davis would harm the City of Davis' interests or subject the parties to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations. It has not been shown that the parties would not present an adequate prosecution or defense of the claims.

The demurrer to the first and fifth causes of action on the ground of lack of justiciability is **SUSTAINED WITH LEAVE TO AMEND**. Based on the allegations of the complaint, no dissolution or distribution of assets has occurred. (Complaint ¶ 50.)

The demurrer to the first, third, fourth, and fifth causes of action on the ground that the plaintiff is no longer the residual beneficiary of the defendant's assets is **OVERRULED**.

The demurrer to the second cause of action on the ground that the complaint does not allege sufficient facts to establish that the defendant owes the plaintiff a fiduciary duty is **SUSTAINED WITH LEAVE TO AMEND**. The bare assertion that one is a trustee or owes a fiduciary obligation is insufficient. (4 Witkin Cal. Procedure (5th ed. 2008) Pleading § 386, p. 524.) Plaintiff has not established that the allegation that the plaintiff's status as residual beneficiary under the defendant's articles of incorporation is sufficient to establish a trust or fiduciary relationship as a matter of law.

The demurrer to the third cause of action on the ground that the complaint does not allege that the plaintiff timely named a replacement "Sponsor Director" is **OVERRULED**. The complaint alleges that the plaintiff was not given proper notice of the removal of its Sponsor Director. (Complaint ¶¶ 27-30.)

The demurrer to the third and fourth causes of action on the ground that the complaint does not allege that the plaintiff is a director of the defendant corporation is **SUSTAINED WITH LEAVE TO AMEND**. (Corp. Code, § 1602.)

Plaintiff shall file an amended pleading by no later than May 22, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Zasa v. Sutter Davis Hospital, et al
Case No. CV PO 08-106

Hearing Date: May 7, 2009 Department Fifteen 9:00 a.m.

The unopposed motion to set aside the December 3, 2008, entry of default judgment against Brandon Donlin is **GRANTED**. (Code Civ. Proc., § 473, subd. (b).) Defendant shall file his answer by May 18, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.